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APR 24 2008

In re Application of Komarechka	:	
Application No. 10/648,301	:	Decision on Petition
Filing Date: August 27, 2003	:	
Attorney Docket No. BK-001	:	

This is a decision on the petition under 37 CFR 1.137(b), filed October 28, 2007, to revive the above-identified application.

The petition is **dismissed**.

The above-identified application became abandoned for failure to reply in a timely manner to the final Office action mailed April 23, 2007, which set a shortened statutory period for reply of three (3) months. An extension of time under the provisions of 37 CFR 1.136(a) was not obtained. Accordingly, the above-identified application became abandoned on July 24, 2007.

A grantable petition under 37 CFR 1.137(b) must be accompanied by:

- (1) the reply required to the outstanding Office action or notice, unless previously filed,
- (2) the petition fee,
- (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional, and
- (4) a terminal disclaimer and fee if the application was filed on or before June 8, 1995 or if the application is a design application.

As to item (1) above, petitioner has not submitted a proper reply to the final Office action mailed April 23, 2007. A proper reply to a final rejection consists only of:

- (1) an amendment which *prima facie* places the case in condition for allowance,
- (2) a Notice of Appeal and the required fee,
- (3) a RCE, or
- (4) a continuation application.

As of this date, none of the above acceptable forms of reply have been filed. On October 28, 2007, a petition under 37 CFR 1.137(b) and a response were filed. The proposed amendment was sent to the examiner to determine whether it placed the application in condition for

allowance. The examiner determined that the proposed amendment raised new issues requiring further search or consideration. Since the amendment does not prima facie place the application in condition for allowance, it is an improper reply to the final Office action mailed on April 23, 2007. As a courtesy, a copy of an unofficial advisory action is attached.

Any request for reconsideration must be submitted within TWO (2) MONTHS from the mail date of this decision. No further petition fee is required for the request. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.137(b)."

Any request for reconsideration may be filed via EFS. If not filed by EFS, further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By facsimile: (571) 273-8300
Attn: Office of Petitions

By hand: U.S. Patent and Trademark Office
Customer Service Window
Randolph Building
401 Dulany Street
Alexandria, VA 22314

Telephone inquiries regarding this communication should be directed to Petitions Attorney Steven Brantley at (571) 272-3203.



Charles Steven Brantley
Senior Petitions Attorney
Office of Petitions

Attached: Copy of unofficial advisory action

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/648,301	Applicant(s) KOMARECHKA, ROBERT G.	
	Examiner DANIEL WASHBURN	Art Unit 2628	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 15-20.
Claim(s) rejected: 6-14.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: In the final rejection claims 15-20 were objected to as being dependent upon rejected base claim 7 and dependent claims 8-14. It was noted that the claims would be allowable if rewritten in independent form including all the limitations of the base claim and any intervening claims (e.g., claims 8-14). The applicant has amended the application such that dependent claim 17 is now dependent from claim 6, where previously presented claim 6 included the claim limitations of claim 16 and the additional limitation, 'wherein the pixelated presentation discloses interpretable data based on said color hues' (third line from the bottom). The applicant has amended claim 6 to describe step (e) as 'correcting the field measurements for external conditions in order to obtain remnant values for each field measurement Xremnant, Yremnant, and Zremnant,' which is considered similar, but not identical, in scope to previously objected to claim 15. Finally, the applicant has amended claim 6 to describe step (f) as 'converting said Cartesian remnant values to mathematical spherical coordinates,' which is considered similar, but not identical, in scope to the limitations found in claim 16 and the last two lines of claim 6.

Thus, the scope of claims 17-20 has been changed because claims 17-20 no longer indirectly or directly depend from the subject matter of claims 7-14, as the subject matter of claims 8-14 has been cancelled and claims 17-20 now depend from independent claim 6 instead of independent claim 7 (the two independent claims are considered to have similar, but not identical, subject matter). Further, the scope of claim 6 has been changed, as the amendments to claim 6 are considered similar, but not identical, in scope to the subject matter of cancelled claims 15 and 16.

Therefore, the proposed amendments require further search and/or consideration before patentability can be determined.

Continuation of 11. does NOT place the application in condition for allowance because: The amendments alter the scope of the claims, which means further search and/or consideration is required before patentability can be determined.